

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

HB 1479 – SB 1558

April 13, 2016

**SUMMARY OF ORIGINAL BILL:** Permits a witness exempt from sequestration to testify in any order—not just first—if the court determines within its discretion that no prejudice would result.

FISCAL IMPACT OF ORIGINAL BILL:

NOT SIGNIFICANT

**SUMMARY OF AMENDMENTS (016038, 016041):** Amendment 016038 deletes all language after the enacting clause and rewrites the bill.

Amendment 016038 adds a subsection to Tenn. Code Ann. § 39-17-108 (tampering with construction signs and barricades—travel on closed roads—definitions) permitting someone, if incident to lawful hunting, to: (1) drive around or through any barricade or fence on an officially closed highway or road; (2) drive around a detour sign or barricade or fence; (3) or ignore or disregard a warning sign before the road has been officially opened to public traffic by the Department of Transportation or the appropriate county or municipal officer.

Amendment 016041 adds three sections to the bill as amended by amendment 016038. These sections update Tenn. Code Ann. § 40-35-121 (criminal gang offenses—enhanced punishment—procedure) to require the underlying offense to be committed at the direction of, in association with, or for the benefit of the defendant's criminal gang or a member of the defendant's criminal gang.

**FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENTS:**

**Unchanged from the original fiscal note.**

Assumptions for the bill as amended:

*Tampering with Construction Signs and Barricades*

- Tennessee Code Annotated § 39-17-108(b)(3)–(5) prohibits a person from: (1) driving around or through any barricade or fence on an officially closed highway or road; (2) driving around a detour sign or barricade or fence; (3) or ignoring or disregarding a

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warning sign before the road has been officially opened to public traffic by the Department of Transportation or the appropriate county or municipal officer.

- A violation of Tenn. Code Ann. § 39-17-108 is a Class A misdemeanor.
- The bill as amended authorizes a person, if incidental to lawful hunting, to: (1) drive around or through any barricade or fence on an officially closed highway or road; (2) drive around a detour sign or barricade or fence; (3) or ignore or disregard a warning sign before the road has been officially opened to public traffic by the Department of Transportation or the appropriate county or municipal officer.
- It is assumed that the bill as amended will not significantly reduce the number of Class A misdemeanor convictions for tampering with construction signs and barricades.

#### *Criminal Gang Offense*

- Tennessee Code Annotated § 40-35-121 provides an enhanced punishment for any “criminal gang member” to commit a “criminal gang offense.” A district attorney general must charge a criminal gang offense separately. If convicted, the criminal gang member will be punished one classification higher than the classification established by the specific statute creating the underlying offense committed.
- Under Tenn. Code Ann. § 40-35-121(b), a person commits a criminal gang offense, and, thus, is punished one classification higher, if at the time of the offense the person was a criminal gang member. There is no requirement that the underlying offense be gang-related.
- The Tennessee Court of Criminal Appeals held in *State v. Bonds*, No. E2014-00495-CCA-R3-CD, 2016 Tenn. Crim. App. LEXIS 266, (Tenn. Crim. App. April 7, 2016), that subsections (b) and (e) of Tenn. Code Ann. § 40-35-121 violated substantive due process, because the subsections contain no nexus between the underlying offense and the criminal activity of a gang. *Id.* at \*81-82.
- The Court noted:

There is no Tennessee law prohibiting membership or affiliation with a criminal gang as defined in Section 40-35-121. Thus, a defendant’s affiliation with such a group is statutorily permissible and innocuous until it is joined with otherwise criminal conduct. However, Section 40-35-121(b) imposes mandatory punishment on an eligible defendant by imputing to him responsibility for the criminal activity of the gang as a collective without requiring the defendant’s knowledge of and intent to promote such activity.

- The bill as amended rewrites subsections (b) and (e) of Tenn. Code Ann. § 40-35-121 to require a nexus between the underlying offense and the criminal activity of a gang.
- The bill as amended narrows the criminal gang offense, but it is assumed that the change will not significantly reduce admissions. It is assumed that the bill as amended will not significantly impact state incarceration costs or the operations of the courts, district attorneys, or public defenders.

**CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in dark ink that reads "Krista M. Lee". The signature is written in a cursive, flowing style.

Krista M. Lee, Executive Director

/trm